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No. 07-10441

In the Supreme Court of the United States

JOHNNIE CORLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 3501 authorizes the suppression of a voluntary confession made more than six hours after a defendant's arrest on federal charges, but before his initial appearance before a magistrate, because of a purportedly unreasonable delay in the defendant's presentment to the magistrate.

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OPINIONS BELOW

The opinion of the court of appeals (J.A. 175-240) is reported at 500 F.3d 210.[1] The order of the district court (Pet. App. C1-C6) is unreported.

JURISDICTION

The judgment of the court of appeals (J.A. 241-242) was entered on March 6, 2007. A petition for rehearing was denied on November 16, 2007 (J.A. 243-244). On February 5, 2008, Justice Souter extended the time within which to file a petition for a writ of certiorari to and including April 14, 2008, and the petition was filed

[1] The version of the court of appeals' opinion that is contained in the appendix to the petition for a writ of certiorari is not separately paginated. This brief cites the version of the court of appeals' opinion that is reprinted in the joint appendix.

on that date. The petition for a writ of certiorari was granted on October 1, 2008. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-7a.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was convicted of conspiring to commit armed bank robbery, in violation of 18 U.S.C. 371, and armed bank robbery, in violation of 18 U.S.C. 2113(d). He was sentenced to 170 months of imprisonment, to be followed by five years of supervised release. The court of appeals affirmed. J.A. 175-240.

1. On June 16, 2003, three men robbed the Norsco Federal Credit Union in Norristown, Pennsylvania. Federal officials identified petitioner as a suspect in the robbery, and they later learned that there was an outstanding state bench warrant for his arrest for an unrelated crime. J.A. 178.

On September 17, 2003, a team of federal and state officers sought to execute the state arrest warrant. J.A. 178. Petitioner attempted to evade arrest: he backed his Jeep into an officer's car; pushed his nine-year-old daughter, who was a passenger in the Jeep, into another officer; and then led the officers on a foot chase down a public street, through private yards and a creek, and up an embankment. J.A. 14-16, 30, 108-113. At about 8:00 a.m., petitioner was ultimately arrested on charges of assaulting a federal officer. J.A. 28, 93, 178.

Petitioner's hand was injured during his altercation with the officers. J.A. 27-28, 114. At approximately

11:45 a.m., after having been processed at the Sharon Hill Borough Police Department, petitioner was transported to a hospital, where he received five stitches and medication. Petitioner was then taken to the Philadelphia FBI office and arrived at about 3:30 p.m. J.A. 48-51, 93-94, 178.

At the FBI office, petitioner was given food and drink and was informed that he was under arrest for an outstanding warrant and assaulting a federal officer and under investigation for the credit-union robbery. J.A. 40-41, 51, 178. At 5:07 p.m., petitioner was verbally informed of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), received a written advice-of-rights form, and signed a waiver. J.A. 59, 61, 115-116, 178. Between 5:27 and 6:38 p.m., petitioner orally confessed to the credit-union robbery. J.A. 45-46, 62, 117-123, 178.

The agents asked petitioner to make a written confession as well, but petitioner stated that he was tired and asked to continue the following day. The agents agreed, and the interrogation was suspended. At 10:30 a.m. the following morning, the interrogation resumed. J.A. 178. Petitioner was advised of his *Miranda* rights a second time, and he signed a written confession shortly thereafter. J.A. 84-85, 126-128, 172-174, 178-179. At 1:30 p.m., petitioner made his initial appearance before a federal magistrate judge with respect to the charge of assaulting a federal officer. JA 179.[2]

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[2] Some opinions of this Court, see, *e.g.*, *Mallory* v. *United States*, 354 U.S. 449, 454 (1957), refer to a defendant's first appearance before a magistrate generically as an "arraign[ment]." An "initial appearance" under Federal Rule of Criminal Procedure 5, which is sometimes called "presentment," differs from an "arraignment" under the federal rules. An "arraignment," which is the subject of Federal Rule of Criminal Procedure 10, refers to the defendant's subsequent appearance before

2. Petitioner moved to exclude his oral and written confessions, arguing that they were obtained in violation of Federal Rule of Criminal Procedure 5(a)(1)(A), which states, in pertinent part, that "[a] person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge."

The district court denied the motion. Pet. App. C1-C6. The court stated that Rule 5(a), coupled with this Court's decisions in *McNabb* v. *United States*, 318 U.S. 332 (1943), and *Mallory* v. *United States*, 354 U.S. 449 (1957), had provided for the suppression of a confession given after an "unreasonable delay" in presentment, but that rule had been "statutorily circumscribed" by 18 U.S.C. 3501(c). J.A. 94-95. According to the district court, Section 3501(c) "provides a 'safe harbor' for law enforcement, setting a six-hour window within which otherwise admissible confessions may not be excluded solely on the basis of the defendant not having been brought before a magistrate judge." Pet. App. C2-C3. The court concluded that the three-hour-and-forty-five-

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the court to enter a plea to charges set forth in an indictment or information. See 1 Charles Alan Wright, *Federal Practice and Procedure* § 71, at 76-77 (2d ed. 1982). When a defendant is presented before a magistrate judge (or state or local judicial officer, see Fed. R. Crim. P. 5(c)(1)(B)) pursuant to Rule 5(a), in contrast, he has been arrested but usually has not been indicted. The defendant is therefore not called upon to plead to charges at that time. See Fed. R. Crim. P. 5(d)(4). Instead, the magistrate judge conducting the presentment informs the defendant of "the complaint against [him]," his "right to retain counsel or to request that counsel be appointed if [he] cannot obtain counsel," "the circumstances, if any, under which [he] may secure pretrial release," "any right to a preliminary hearing," and his "right not to make a statement, and that any statement made may be used against [him]." Fed. R. Crim. P. 5(d)(1)(A)-(E). The magistrate judge who conducts the presentment also addresses the issue of bail. Fed. R. Crim. P. 5(d)(3).

minute period during which petitioner was receiving medical care "is excluded from the six-hour window provided by § 3501" and that petitioner's oral confession thus fell within the six-hour safe harbor. *Id.* at C4. With respect to petitioner's written confession, the district court concluded that "a break from interrogation requested by an arrestee who has already begun his confession does not constitute unreasonable delay under Rule 5(a)" and that "the period between [petitioner's] arrest and his written confession was not 'unnecessary' for the purposes of [that rule]." *Id.* at C4-C5.

3. A divided panel of the court of appeals affirmed in a published opinion. J.A. 175-240.

a. The majority explained that 18 U.S.C. 3501 was enacted in 1968 in response to this Court's decisions in *McNabb*, *Mallory*, and *Miranda.* J.A. 184. Section 3501(a) states that, in federal prosecutions, "a confession * * * shall be admissible in evidence if it is voluntarily given." 18 U.S.C. 3501(a). Section 3501(b) "instructs the trial judge to determine the voluntariness of a confession by 'tak[ing] into consideration all the circumstances surrounding the giving of [it],'" and it sets forth "a nonexclusive list" of five relevant circumstances. J.A. 185 (brackets in original) (quoting 18 U.S.C. 3501(b)). Section 3501(c) provides that a confession "shall not be inadmissible solely because of delay in bringing [the defendant] before a magistrate judge" so long as the "confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if [the] confession was made or given * * * within six hours immediately following [the defendant's] arrest." 18 U.S.C. 3501(c). Section 3501(c) further provides that the six-hour "time limitation * * * shall not apply in any case in which the delay in

bringing [the defendant] before [a] magistrate judge * * * beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge." *Ibid.*

Relying on its decision in *Government of the Virgin Islands* v. *Gereau*, 502 F.2d 914 (3d Cir. 1974), cert. denied, 420 U.S. 909 (1975), the court of appeals held that Section 3501(a) "makes voluntariness the sole criterion for admissibility of a confession." J.A. 189. The court explained that Section 3501(c) "instructs courts that they may not find a confession involuntary 'solely' because of the length of presentment delay where the confession is *otherwise* voluntary and where the delay is less than six hours (or longer than six hours but explained by transportation difficulties)." J.A. 191. Applying that standard, the court of appeals affirmed petitioner's convictions because it understood the district court to have held that petitioner's confessions were voluntary, petitioner had not "seriously dispute[d]" that conclusion, and the court of appeals "discern[ed] no error in it." J.A. 197. In light of that holding, the court of appeals found it "unnecessary * * * to address the [d]istrict [c]ourt's holding that [petitioner's] oral confession should be treated as having been made within six hours of arrest," although it observed that such a "conclusion is contrary to the text of the statute." J.A. 197 n.7.[3]

b. Judge Sloviter dissented. J.A. 217-240. In her view, the general rule is that "even a voluntary statement may be excluded if the presentment delay is unrea-

[3] The court of appeals also rejected a variety of other claims relating to petitioner's sentence that petitioner does not renew before this Court. J.A. 198-217.

sonable or unnecessary," J.A. 236, and Section 3501(c) merely creates a "safe-harbor period" during which a confession may be excluded only if it was involuntary, J.A. 238; see J.A. 236 (observing that "courts have generally equated 'unnecessary' [the term used in Federal Rule of Criminal Procedure 5(a)(1)(A)] to 'unreasonable' [which appears in the final clause of Section 3501(c)]"). Judge Sloviter also disagreed with the district court's conclusion that the time petitioner spent receiving medical treatment should be excluded for purposes of calculating the six-hour safe-harbor period, J.A. 227-228, and she argued that the delay in bringing petitioner before the magistrate had been "unnecessary" within the meaning of Federal Rule of Criminal Procedure 5(a)(1), see J.A. 236-240.

SUMMARY OF ARGUMENT

Petitioner's voluntary confessions were not inadmissible based on his claim of unreasonable delay in presentment. To the contrary, 18 U.S.C. 3501(a) and Federal Rule of Evidence 402 both mandated the admission of petitioner's voluntary confessions.

A. Section 3501(a) states a general rule that a voluntary confession "shall be admissible in evidence." Section 3501(b) makes delay in presentment to a magistrate a factor in the voluntariness analysis. Those provisions preclude suppression of a confession based on delay in presentment alone. Petitioner contends that Section 3501(c) requires exclusion of a confession made more than six hours after arrest where the additional delay was neither reasonable nor necessary. That reading of Section 3501(c) not only is out of sync with the general reluctance to adopt exclusionary rules because of the substantial costs they impose, but is also untenable as a matter of statutory construction.

Section 3501(c) was a legislative response to this Court's decisions in *McNabb* v. *United States*, 318 U.S. 332 (1943), and *Mallory* v. *United States*, 354 U.S. 449 (1957), which relied on this Court's supervisory authority over the federal courts to exclude confessions resulting from unreasonable delays in presentment. Unlike the *McNabb-Mallory* rule, however, Section 3501(c) does not explicitly call for the exclusion of *any* confession. It merely provides a safe harbor forbidding exclusion of confessions solely for unreasonable delay in presentment when the confession was made within six hours of arrest (plus reasonable transportation delays).

Petitioner asks this Court to draw a negative implication from Section 3501(c), such that delays *greater* than six hours result in exclusion. But a negative implication cannot displace the express command of Section 3501(a) that a voluntary confession is admissible. That is particularly true in light of the costs that such an exclusionary rule would impose and the fact that a consistent application of negative-implication principles to Section 3501(c) would produce untenable results. In particular, it would limit delays beyond six hours to transportation-related delays (and thus exclude situations involving medical emergencies and the unavailability of judges).

Nor can Section 3501(a) be displaced on the theory that Section 3501(c) is a more specific command that supersedes the general rule of Section 3501(a). That principle applies only where the two commands are inconsistent, and nothing in the safe-harbor provision of Section 3501(c) conflicts with the rule of admissibility under Section 3501(a). Petitioner also cannot convert Section 3501(c) into a rule of exclusion based on the principle that it would otherwise be rendered superfluous. Section 3501(c)'s safe harbor provision clarifies the

law of admissibility in one particular situation, even if the general voluntariness rule would lead to the same result in case-by-case application. There is no rule against Congress taking a belt-and-suspenders approach to addressing an issue. And it does not rewrite Section 3501(c) to treat its reference to admissibility as a reiteration of voluntariness in light of the overriding command of voluntariness in Section 3501(a).

B. Petitioner also seems to suggest that, even if Section 3501 does not affirmatively mandate suppression, it left the *McNabb-Mallory* rule intact for delays in presentment of more than six hours. To the extent that petitioner would read Section 3501(a) that way, the statute does not assist him. In Federal Rule of Evidence 402, Congress provided that all relevant evidence is admissible unless otherwise provided by the Constitution, a statute, the evidence rules, or other rules promulgated by this Court pursuant to statutory authority. Because the *McNabb-Mallory* rule was announced under this Court's supervisory powers, it must yield to a valid Act of Congress. The Rules of Evidence were enacted by Congress and thus displace contrary rules adopted under this Court's supervisory powers. Accordingly, if Section 3501 were interpreted as leaving intact the *McNabb-Mallory* rule except for pre-presentment confessions taken within six hours of arrest, Federal Rule of Evidence 402 eliminated that remaining vestige of *McNabb-Mallory*.

C. Because the statutory text provides a clear answer to the question presented, there is no need to resort to legislative history. But in any event, the legislative history of Section 3501 does not justify interpreting the statute to contain an implicit exclusionary rule. The original version of the bill that became Section 3501 pro-

vided that a confession could not be suppressed solely because of a delay in presentment, if the confession were found voluntary. All recognized that that provision would eliminate the *McNabb-Mallory* rule. The six-hour limitation was adopted in an amendment proposed by Senator Scott; it served, among other things, to alleviate any constitutional problems that could have arisen if the bill were interpreted to preclude suppression of a confession taken after a two- or three-day delay in presentment. To the extent that the Scott amendment was also modeled on an earlier statute applicable to the District of Columbia, which limited but did not eliminate *McNabb-Mallory*, that statute (like Section 3501) did not expressly mandate the exclusion of evidence for delay in presentment. That reality compels petitioner to rely on the legislative history of the District of Columbia statute as a means of construing Section 3501. That form of double legislative hearsay is far too attenuated to have any bearing on the question presented here.

D. The court of appeals' interpretation of Section 3501(c) is not constitutionally doubtful, as petitioner believes and thus does not trigger the avoidance canon. According to petitioner, the holding below narrows the basis for finding a confession involuntary by precluding such a finding based solely on delay of less than six hours after arrest. Congress cannot limit the grounds on which a confession may be found constitutionally involuntary. But no serious argument can be made that any confession would be found involuntary based *solely* on a delay in presentment of six hours or less. Accordingly, no serious question would be raised even if Section 3501 is read to preclude a finding of involuntariness based solely on a delayed presentment of less than six hours.

E. Policy arguments likewise cannot justify reading an exclusionary rule into Section 3501(c). This Court has strongly cautioned against judicial imposition of exclusionary rules, see, *e.g.*, *Hudson* v. *Michigan*, 547 U.S. 586, 591 (2006); *McNeil* v. *Wisconsin*, 501 U.S. 171, 181 (1991), and the high cost of excluding voluntary confessions vastly outweighs any marginal benefits that would be achieved by encouraging prompt presentment. No demonstrated pattern of violations exists, and if one were to emerge, Congress and rule-making committees are well situated to frame the proper response.

The *McNabb-Mallory* rule was adopted long before this Court's announcement and refinement of *Miranda*. Today, in light of *Miranda*, Fourth Amendment restraints, and voluntariness doctrine, no necessity exists for a non-constitutional suppression rule based solely on delayed presentment. Arrested defendants who are interrogated in custody learn of their rights to silence and to counsel even before presentment to a magistrate. This case, in which petitioner twice validly waived his *Miranda* rights and asked to rest overnight before reducing his oral confession to writing, illustrates that delayed presentment is not so inherently oppressive as to warrant a nonconstitutional suppression rule. And, to the extent that petitioner suggests that a bright-line rule would facilitate police compliance, law enforcement can adopt such a rule if it is deemed beneficial. But society should not be compelled to pay the price of excluded confessions in order to enforce such a rule—particularly when petitioner's proposed, extra-statutory, rule of requiring suppression when there is "unreasonable or unnecessary" delay beyond six hours is itself far from clear.

F. To the extent that this Court concludes that delay in presentment, standing alone, can justify exclusion under Section 3501(c), it should remand for a determination of whether the delay in this case was unjustified. The district court addressed that issue, but the court of appeals did not, and this Court should not review the issue in the first instance.

ARGUMENT

EXCLUSION OF A VOLUNTARY CONFESSION IS NOT AN AUTHORIZED REMEDY FOR AN UNREASONABLE DELAY IN PRESENTMENT

Petitioner gave voluntary confessions, both orally and in writing, after being informed of and validly waiving his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966). His detention was based on probable cause and he was presented to a magistrate within the time allowed under the Fourth Amendment. See *County of Riverside* v. *McLaughlin*, 500 U.S. 44 (1991). Accordingly, nothing in the Constitution required the exclusion of his confessions.

The question here is whether a federal statute—18 U.S.C. 3501(c)—leads to a different result, either because it requires the suppression of confessions given after a six-hour delay in presentment, or because it preserves, for delays greater than six hours, the supervisory-powers rule of suppression announced by this Court in its pre-*Miranda* decisions in *McNabb* v. *United States*, 318 U.S. 332 (1943), and *Mallory* v. *United States*, 354 U.S. 449 (1957). The Court should be especially reluctant to recognize exclusionary rules because of their great societal costs, and, as matter of text, legislative history, and policy, suppression is not warranted here. Section 3501 itself creates only a rule of inclusion

of voluntary confessions. And any remaining supervisory powers rule of exclusion under *McNabb-Mallory* was superseded by Federal Rule of Evidence 402.

A. 18 U.S.C. 3501 Required Admission Of Petitioner's Voluntary Confessions

Section 3501(a) of Title 18 declares that, "[i]n any criminal prosecution brought by the United States or by the District of Columbia, a confession * * * *shall* be admissible in evidence if it is voluntarily given." 18 U.S.C. 3501(a) (emphasis added). Petitioner does not dispute the court of appeals' determination that his oral and written confessions were voluntary. Section 3501(a), standing alone, therefore mandates the admission of petitioner's oral and written confessions.[4]

Petitioner argues, however, that *Section 3501(c)* requires exclusion of confessions obtained more than six hours after arrest where there was an "unreasonable or unnecessary" delay in presenting the defendant to the magistrate judge. Pet. Br. 28. Petitioner is incorrect.

1. Section 3501(c) responded to two decisions of this Court under its supervisory powers. See p. 27, *infra*. In its 1943 decision in *McNabb*, the Court, "[i]n the exercise of its supervisory authority over the administration of criminal justice in the federal courts," 318 U.S. at 341, held inadmissible confessions obtained as the direct result of federal officers' failure to comply with statutes mandating that an arrested person be taken promptly

[4] In *Dickerson* v. *United States*, 530 U.S. 428 (2000), this Court held that Section 3501(a) is unconstitutional insofar as it purports to require the admission of voluntary confessions obtained in violation of the procedures mandated by *Miranda*. See *id.* at 432. Petitioner does not contend, however, that the admission of his written and oral confessions violated either *Miranda* or any other "constitutional decision" (*ibid.*) of this Court.

before the nearest committing magistrate. The Court reasoned that the purpose of those statutes, and of similar state provisions, was to "check[] resort to those reprehensible practices known as the 'third degree' which, though universally rejected as indefensible, still find their way into use." *Id.* at 344. In the Court's view, those practices had been used in *McNabb*, *id.* at 344-345, and therefore "to permit such evidence to be made the basis of a conviction in the federal courts would stultify the policy which Congress has enacted into law," *id.* at 345.[5]

The statutes on which the Court relied in *McNabb* were superseded by the 1946 adoption of Federal Rule of Criminal Procedure 5. The preliminary draft of Rule 5 had included a provision codifying the holding of *McNabb*, but that provision caused such controversy that it was omitted from the final draft submitted by the advisory committee to this Court and from the criminal rules as adopted. See 1 Charles Alan Wright, *Federal Practice and Procedure* § 72, at 80-84 (2d ed. 1982). The

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[5] The Court had granted certiorari in *McNabb* to review a claim that the confessions were involuntary under due process standards, but did not reach that issue because it raised the prompt presentment issue sua sponte. The proceedings on remand revealed that the Court had been mistaken in the factual premise of its analysis—*i.e.*, that the defendants were not presented before a commissioner promptly after their arrest. *McNabb* v. *United States*, 142 F.2d 904, 905-907 (6th Cir.), cert. denied, 323 U.S. 771 (1944). Scholars also later took issue with the legal premise of the Court's analysis in *McNabb*—*i.e.*, that the prompt-presentment statutes were intended to prevent prolonged interrogation or other third-degree practices. The legislative history of the federal statutes at issue in *McNabb* indicates that they were intended "to prevent federal marshals from increasing their fees for transporting prisoners farther than necessary." Sara Sun Beale, *Reconsidering Supervisory Power in Criminal Cases: Constitutional and Statutory Limits on the Authority of the Federal Courts*, 84 Colum. L. Rev. 1433, 1448 (1984).

Court nonetheless adhered to *McNabb* in the first case that it decided after the adoption of the new rule, *Upshaw* v. *United States*, 335 U.S. 410 (1948). In *Upshaw,* the Court reaffirmed the nonconstitutional basis for the *McNabb* doctrine (*id.* at 414 & n.2) and it rejected the contention that *McNabb* had done "no more than extend the meaning of 'involuntary' confessions to proscribe confessions induced by psychological coercion as well as those brought about by physical brutality." *Id.* at 412.

The Court invoked the *McNabb* rule again in *Mallory*, *supra*, where it further explained the rationale for the rule. The Court quoted the language of Rule 5(b) (now found in Rule 5(d)) to the effect that the judicial officer must inform the defendant of his rights to counsel and silence, and also must advise him that any statement he makes may be used against him. 354 U.S. at 453-454. The Court also determined that the defendant in *Mallory* had been denied the safeguards the prompt presentment requirement was designed to protect, noting that he had not been, before his eventual presentment, "told of his rights to counsel or to a preliminary examination before a magistrate, nor was he warned that he might keep silent and 'that any statement made by him may be used against him.'" *Id.* at 455 (quoting Fed. R. Crim. P. 4(d)(1)(E)).

2. Against the backdrop of those decisions, Congress enacted Section 3501. Unlike *McNabb* and *Mallory*, Section 3501(c) does not call for the exclusion of any confession, much less a confession whose admission is expressly mandated by a different section of the same statute. Section 3501(c) provides that confessions that satisfy certain criteria "shall *not* be *inadmissible* solely because of delay in bringing [the defendant] before a magistrate judge or other [appropriate] officer."

18 U.S.C. 3501(c) (emphases added). By its terms, therefore, Section 3501(c) prescribes only a rule of inclusion: it states that certain confessions shall be admitted without regard to whether some other source of law calls for their exclusion. When, in contrast, Congress instructs courts to exclude what might otherwise be highly relevant evidence, it typically provides that certain types of evidence "shall not * * * be admitted," 7 U.S.C. 2276(b)(2)(B), "shall not be admissible in evidence," 15 U.S.C. 2074(b), "[are] not admissible," 18 U.S.C. 3153(c)(3), or "are inadmissible," 18 U.S.C. 4014(d).[6] In fact, Congress adopted just such an exclusionary rule for evidence obtained as a result of unlawful wiretapping in the same Public Law that enacted Section 3501. See Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 802, 82 Stat. 216 (18 U.S.C. 2515) (providing that "no part of the contents of [any intercepted] communication and no evidence derived therefrom may be received in evidence in any * * * proceeding in or before any court").

Because Section 3501(c) is a rule of inclusion, it takes precedence over any earlier statute or rule with which it conflicts, as well as any rule of procedure promulgated by this Court pursuant to its supervisory authority over the lower federal courts. See, *e.g.*, *Bank of Nova Scotia* v. *United States*, 487 U.S. 250, 254 (1988) (stating that "[e]ven a sensible and efficient use of the supervisory

[6] See, *e.g.*, 10 U.S.C. 613a(b)(2), 1102(b)(1), 14104(b)(2); 13 U.S.C. 9(a); 14 U.S.C. 645(c)(1); 15 U.S.C. 281a, 6606(c)(3); 20 U.S.C. 9573(d)(1)(B); 23 U.S.C. 148(g)(4), 402(k)(1), 409; 26 U.S.C. 6103(i)(4)(C); 42 U.S.C. 2240, 7412(r)(6)(G), 10604(d); 42 U.S.C. 299b-22(a)(4), 37890g(a) (Supp. V 2005); 45 U.S.C. 744(d)(4); 49 U.S.C. 504(f), 1154(b), 20703(c), 45707; 49 U.S.C. 111(k)(2)(B)(ii) (Supp. V 2005); Pub. L. No. 110-161, Div. B, tit. II, 121 Stat. 1904 (2007); Fed. R. Crim. P. 58(c)(2)(B).

power . . . is invalid if it conflicts with constitutional or statutory provisions" (brackets in original) (quoting *Thomas* v. *Arn*, 474 U.S. 140, 148 (1985))). Thus, Section 3501(c) indisputably displaces the *McNabb-Mallory* rule with respect to confessions taken within six hours of arrest (plus any reasonable time for transportation). The question here is whether Section 3501(c) also codifies an implicit exclusionary rule for confessions taken more than six hours (plus reasonable transportation time) after arrest and before presentation to a magistrate.

3. The text of Section 3501(c) does not announce any exclusionary rule and, in particular, does not mandate the exclusion of confessions taken more than six hours after arrest based on unreasonable delay in presentation to a magistrate. That textual omission of any exclusionary rule should be the end of the matter. See *United States* v. *Alvarez-Sanchez*, 511 U.S. 350, 356 (1994) ("When interpreting a statute, we look first and foremost to its text.").[7] Just as this Court has strongly cautioned against the adoption of exclusionary rules because of their great societal costs, see, *e.g.*, *Hudson* v.

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[7] In *Alvarez-Sanchez*, this Court held that 18 U.S.C. 3501(c) "does not apply to statements made by a person who is being held solely on state charges." 511 U.S. at 352. As noted previously, petitioner was arrested as part of a joint operation by federal and state authorities whose immediate goal was to execute a state warrant for his arrest. The courts below expressly determined, however, that petitioner was "placed under federal arrest for assault on a law enforcement officer" from the beginning, J.A. 178; Pet. App. C1, and the government did not contend otherwise before the court of appeals, see Gov't C.A. Br. 8, 14-26. Accordingly, this case presents an issue the Court did not reach in *Alvarez-Sanchez*: "the effect of § 3501(c) on confessions obtained more than six hours after an arrest on federal charges." 511 U.S. at 361 (Ginsburg, J., concurring); see *id.* at 356.

Michigan, 547 U.S. 586, 591 (2006) ("Suppression of evidence * * * has always been our last resort, not our first impulse."), Congress should not be presumed to have adopted such a rule without explicitly saying so.

Petitioner nonetheless asserts (Pet. Br. 14) that the negative implication of Section 3501(c) "is that confessions made outside the six-hour time limitation set forth in § 3501(c) are inadmissible * * * if the defendant's presentment to a magistrate was unnecessarily delayed." Whatever negative implication might otherwise be drawn from Section 3501(c) standing alone, such an implication cannot be drawn where it would override the affirmative command of Section 3501(a) that all voluntary confessions "shall be admissible in evidence," 18 U.S.C. 3501(a), and the provision in Section 3501(b) that the "time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment" is a factor in the voluntariness calculus. See *United States* v. *Marrero*, 450 F.2d 373, 379 (2d Cir. 1971) (Friendly, C.J., concurring) (agreeing with the Ninth Circuit's decision in *United States* v. *Halbert*, 436 F.2d 1226, 1231-1237 (1970), which had "conclude[d] that confessions given more than six hours after arrest during a delay in arraignment are admissible if voluntary, although the trial judge * * * may take into account delay in arraignment in his determination of voluntariness" (*id.* at 1237); "we cannot say that Congress intended by the provision in subsection 3501(c) to undo all it had done with the preceding subsections" (*id.* at 1234)). "[N]ot every silence is pregnant" and "[a]n inference drawn from" what Congress did not say in Section 3501(c) "cannot be credited when it is contrary to" the text of a different provision of the

same statute. *Burns* v. *United States*, 501 U.S. 129, 136 (1991) (first brackets in original) (citation omitted).

The error in construing Section 3501(c) to exclude evidence by negative implication is revealed by the untenable consequences of a consistent application of a negative-implication principle to that subsection. Section 3501(c) permits only one form of delay to exceed the six hours provided under its safe-harbor provision for admissibility: delay found "to be reasonable considering the means of transportation and the distance to be traveled to the nearest available * * * magistrate judge or other officer." A logical and consistent application of the "negative implication" canon would mean that Section 3501(c) would provide that all confessions made more than six hours after arrest but before presentment "shall * * * be inadmissible solely because of delay" *unless* the case falls within the travel-related exception set forth in Section 3501(c)'s "[p]rovided" clause. 18 U.S.C. 3501(c). See NACDL Amicus Br. 3 (suggesting that Section 3501(c) renders inadmissible any confession obtained more than six hours after arrest "unless specific, congressionally-sanctioned exceptions are met").

Petitioner does not advocate such an approach, however, and the reason is immediately apparent: it would lead to nonsensical results. Suppose that a delay in presentment were occasioned by the complete unavailability of a judge in the middle of the night, serious injuries to the arrestee or to the arresting officer that demanded immediate medical attention, or the unavailability of a magistrate because of more pressing judicial business or because of the volume of arrestees. None of those reasons would fit textually within Section 3501(c)'s "[p]rovided" clause. That provision does not create an all-pur-

pose "reasonableness" or "necessity" exception to the six-hour period. Instead, it states that the six-hour "time limitation * * * shall not apply in any case in which the delay" in presentment is "reasonable *considering the means of transportation and the distance to be traveled to* the nearest available" judicial officer. 18 U.S.C. 3501(c) (emphasis added). According to a negative-implication approach to statutory interpretation, therefore, no other reason would be acceptable.

Rather than advocate for a logical, consistent, but inherently problematic, application of negative-implication principles to Section 3501(c), petitioner instead argues (Pet. Br. 60) that courts should exclude confessions only where the delay in presentment beyond six hours was "unreasonable and unnecessary" in a broader sense.[8] That approach, however suffers from at least two significant problems. First, it arbitrarily applies a negative-implication analysis to exclude some confessions resulting from delayed presentment, but then changes course and refuses to give effect to a negative implication when it produces patently unreasonable results. Second, it creates an interpretive problem for courts seeking to determine which forms of delay not enumerated by Congress constitute reasonable and permissible purposes for delay. Once courts choose to go beyond the "[p]rovided" clause, they have nothing but judge-made principles for deciding what forms of delay

[8] This is also the position urged by the dissenting judge below, see J.A. 234-237 (Sloviter, J., dissenting), and by the majority of courts of appeals that have rejected the view that Section 3501 makes voluntariness the sole non-constitutional test governing the admissibility of a confession. See, *e.g.*, *United States* v. *Mansoori*, 304 F.3d 635, 660 (7th Cir. 2002), cert. denied, 538 U.S. 967 (2003); *United States* v. *Van Poyck*, 77 F.3d 285, 288 (9th Cir.), cert. denied, 519 U.S. 912 (1996); *United States* v. *Perez*, 733 F.2d 1026, 1035-1036 (2d Cir. 1984).

to count as reasonable. Cf. *United States* v. *Gaines*, 555 F.2d 618, 623-624 (7th Cir. 1977) (stating that a court's decision to exclude a voluntary confession under Section 3501(c) should "depend[] upon a congeries of factors, including such elements as the deterrent purpose of the exclusionary rule, the importance of judicial integrity, and the likelihood that admission of the evidence would encourage violations of the Fourth Amendment"). Congress could have included a general provision for "reasonable delay," which would have been the converse of the requirement in Federal Rule of Criminal Procedure 5 to avoid "unnecessary delay" in presentment. But Congress did not do so, and courts should not read such a requirement into Section 3501(c). In contrast, a consistent *rejection* of negative implications from Section 3501(c) leaves courts with a clear statutory rule to apply, *i.e.*, Section 3501(a)'s command to admit confessions that are voluntary.

4. Petitioner invokes "the principle that a more specific statute will be given precedence over a more general one," *Busic* v. *United States*, 446 U.S. 398, 406 (1980), and he argues that Section 3501(c) is the more specific provision on whether a voluntary confession may be excluded based solely on a delay in presentment. As petitioner acknowledges, however, that interpretive principle applies only "[w]here there is 'inescapable conflict between general and specific terms or provisions of a statute.'" Pet. Br. 31 (quoting 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 46:5, at 224 (rev. 7th ed. 2008)); accord *Preiser* v. *Rodriguez*, 411 U.S. 475, 489 (1973) (applying canon where the more specific statute "explicitly" addressed the manner in which a state prisoner would be permitted to attack his confinement in federal court).

Here, there is no conflict at all, much less an "inescapable" one between the texts of Section 3501(a) and Section 3501(c). Section 3501(a) mandates the admission of voluntary confessions, and Section 3501(c) provides a safe harbor that prohibits the exclusion of voluntary confessions solely on the basis of a delay in presentment up to six hours following arrest. Those provisions do not produce divergent outcomes as applied to any fact patterns.

5. Petitioner thus contends (Pet. Br. 29) that Section 3501(a) cannot mean what it says because that would "render[] subsection (c) entirely superfluous." Even if a straightforward reading of Section 3501 generated surplusage—and, as explained next, it does not—petitioner's argument should still be rejected. "Surplusage does not always produce ambiguity," *Lamie* v. *United States Tr.*, 540 U.S. 526, 536 (2004), and "[i]t is appropriate to tolerate a degree of surplusage rather than adopt a textually dubious construction," *United States* v. *Atlantic Research Corp.*, 127 S. Ct. 2331, 2337 (2007). Section 3501(a) clearly provides that all "voluntarily given" confessions "shall be admissible," and the Court could not adopt petitioner's proposed interpretation of Section 3501(c) without carving a sizeable—and wholly atextual—exception out of Section 3501(a).

Petitioner asserts (Pet. Br. 29-30) that "[i]f voluntariness were the sole criterion of admissibility, it would make no difference whether a confession was given before or after the six-hour time period expired." But the six-hour provision is a safe harbor. The role of a safe-harbor provision—here as elsewhere in the law—is not to change the legal principles that generally govern a claim, but to provide certainty with respect to specific recurring factual situations. Congress has provided

that, as a statutory matter, the sole test for the admissibility of confessions is voluntariness. 18 U.S.C. 3501(a). Congress has also provided that, in assessing voluntariness, a court should consider a variety of factors, including a delay in presentment. 18 U.S.C. 3501(b). But in Section 3501(c) Congress has also provided that courts may not rely *exclusively* on a delay in presentment in excluding confessions when the delay was less than six hours or was attributable to reasonable delays in transportation. 18 U.S.C. 3501(c). In contrast, when a delay in presentment extends beyond the safe-harbor period, Congress has not disturbed a court's ability to find a confession involuntary based on the extent of delay alone in situations where the delay was extraordinarily long or oppressive.

Petitioner contends that the argument set forth in the previous paragraph solves the surplusage problem only by "rewriting" Section 3501(c) to include the word "otherwise" before "voluntary" and substituting the word "involuntary" for "inadmissible." Pet. Br. 33-34. But the word "inadmissible" is virtually synonymous with "involuntary" in this statutory context, because Section 3501(a) already lays down the rule that "voluntary" confessions are "admissible."[9] And the word "otherwise" is implicit in the statute because Section 3501(b) already made delay in presentment a factor in the voluntariness analysis. The effect of Section 3501(c), therefore, is to clarify the application of Section 3501 in one particular circumstance and preclude a finding of inad-

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[9] Section 3501 does not override other constitutional doctrines that might preclude admissibility, as petitioner notes (Pet. Br. 33 n.7). But as a matter of statutory construction, Congress's sole criteria for admissibility was voluntariness. See note 4, *supra*.

missibility (*i.e.*, involuntariness) based solely on a period of delay less than six hours.

It is no objection to that analysis that Section 3501(c) also requires that the trial judge determine that the confession was "made voluntarily" (voluntariness requirement) and that the judge leave "the weight to be given to the confession * * * to the jury" (jury-consideration requirement). 18 U.S.C. 3501(c). Although the voluntariness and jury-consideration requirements are also set forth in Section 3501(a), that fact undermines, rather than supports, petitioner's position. Section 3501(a) does not on its face make any confession inadmissible. Instead, it provides that a confession "shall be *admissible*" so long as the voluntariness and jury-consideration requirements are satisfied. 18 U.S.C. 3501(a) (emphasis added). Accordingly, the repetition of the voluntariness and jury-consideration requirements in Section 3501(c) is necessary in order to eliminate any possible suggestion that Section 3501(c) requires the admission of *any* confession that was made less than six hours after an arrest, regardless of whether that confession was voluntary or if the judge leaves the weight to be assigned to such a confession to the jury.[10]

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[10] Petitioner does not seek to draw support from Section 3501(d), which states that "[n]othing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention." 18 U.S.C. 3501(d). Subsection (d) does not exclude any evidence, but merely reinforces that Section 3501 does *not* bar confessions given outside of the context of custodial interrogation. Congress's decision to underscore the inclusionary focus of Section 3501 cannot be taken as a tacit understanding that the provision contains an unstated exclusionary rule. That is particularly true since Section 3501(d) was part of the original version of Section 3501, before

Finally, even if the Court were to conclude that the most natural reading of Sections 3501(a) and 3501(c) generates some degree of surplusage, there is no rule against Congress providing more detail as to the application of a general rule in a particular situation to ensure that its intent is clear. In any event, the interpretation proposed by petitioner fares no better. According to petitioner, Sections 3501(a) and (b) address situations in which confessions are inadmissible on the ground that they are involuntary, whereas Section 3501(c) addresses situations in which "*voluntary* confessions taken outside the six-hour time limitation" may be excluded solely as a consequence of the delay in presentment. Pet. Br. 37; see *id.* at 52-53. If that argument were correct, however, there would be no explanation for Congress's decision to repeat the voluntariness and jury-consideration requirements in Section 3501(c): on petitioner's view, if the trial judge concluded that a confession was involuntary or failed to permit the jury to decide how much weight to give it, the confession would be inadmissible under Section 3501(a) and there would be no need to consider Section 3501(c) at all. For that reason as well, the presumption against surplusage cannot warrant carving out a completely atextual exception from Section 3501(a).[11]

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it contained the six-hour provision on which petitioner relies in arguing that Congress intended to exclude confessions made outside of that safe-harbor period See S. Rep. No. 1097, 90th Cong., 2d Sess. 9 (1968).

[11] The respondent in *Alvarez-Sanchez* argued that it was necessary for courts to recognize at least one exception to the literal language of Section 3501(a) on the theory that the statute would otherwise mandate admission of confessions even when the court concluded that they were irrelevant. 3/1/94 Tr. Oral Arg. 23-24, *Alvarez-Sanchez*, *supra*. But Section 3501(a) applies only in "criminal prosecution[s] brought by the United States or by the District of Columbia," 18 U.S.C. 3501(a), and a

B. Because Section 3501 Did Not Mandate Exclusion Of Petitioner's Voluntary Confessions, Federal Rule Of Evidence 402 Required Their Admission

If Section 3501 is construed correctly, the statute contains no exclusionary rule for a delay in presentment standing alone, and it mandates the admission of voluntary confessions. See pp. 13-25, *supra*. Petitioner also seems to argue, however, that his confessions were inadmissible because Section 3501 "limits but does not entirely abrogate" (Pet. Br. 24 (emphasis omitted)) the exclusionary rule created by *McNabb* and *Mallory*. Under that view, even if Section 3501(c) did not "codify" the *McNabb-Mallory* rule, it left that supervisory-powers rule intact for confessions taken after six hours of delay in presentment. That contention is without merit.

1. "Before the [Federal Rules of Evidence] were promulgated, the admissibility of evidence in the federal courts was governed in part by statutes or Rules, and in part by case law." *United States* v. *Abel*, 469 U.S. 45, 50 (1984). In *Funk* v. *United States*, 290 U.S. 371 (1933), for example, this Court departed from "[t]he rule of the common law which denies the competency of one spouse to testify in behalf of the other in a criminal prosecution." *Id.* at 382. In so doing, the Court affirmed its power to craft rules governing the admissibility of evidence in federal court "in the complete absence of congressional legislation on the subject." *Id.* at 383.

"confession" in that context is naturally understood as referring to a confession that is incriminating on the offense charged. The definition of "confession" in 18 U.S.C. 3501(e) as a "confession of guilt of any criminal offense or * * * self-incriminating statement," 18 U.S.C. 3501(e), makes clear that it covers incriminating denials or other statements as well as direct admissions of guilt.

"*Mallory* and *McNabb* plainly rest[ed] on [the Court's] supervisory authority" over the lower federal courts. *Sanchez-Llamas* v. *Oregon*, 548 U.S. 331, 346 (2006); accord *Miranda*, 384 U.S. at 463 (describing *Mallory* and *McNabb* as establishing "supervisory rules"); *United States* v. *Mitchell*, 322 U.S. 65, 66 (1944) (describing *McNabb* as "merely another expression" of the Court's practice of formulating common law rules of evidence). It is thus clear that the *McNabb-Mallory* rule is a non-constitutional "judicially created federal rule of evidence." *United States* v. *Carignan*, 342 U.S. 36, 41 (1951).

This Court's "power * * * to prescribe rules of procedure and evidence for the federal courts," including its ability to formulate and apply the exclusionary rule associated with *McNabb* and *Mallory*, "exists only in the absence of a relevant Act of Congress." *Palermo* v. *United States*, 360 U.S. 343, 353 n.11 (1959); accord *Dickerson*, 530 U.S. at 437 (stating that "Congress retains the ultimate authority to modify or set aside any judicially created rules of evidence and procedure that are not required by the Constitution").

In *Bank of Nova Scotia*, for example, this Court held that "a federal court may not invoke supervisory power to circumvent the harmless-error inquiry prescribed by Federal Rule of Criminal Procedure 52(a)." 487 U.S. at 254. In that case, a district court had "dismiss[ed] an indictment for prosecutorial misconduct in a grand jury investigation." *Id.* at 252. The Court explained that "Rule 52 is, in every pertinent respect, as binding as any statute duly enacted by Congress," and it stated that "[t]he balance struck by the Rule between societal costs and the rights of the accused may not casually be overlooked." *Id.* at 255; accord *Johnson* v. *United States*,

520 U.S. 461, 466 (1997) (stating that this Court "ha[d] no authority to make" an exception to the standards prescribed by Federal Rules of Criminal Procedure 52(b) for granting relief on a forfeited claim); *Carlisle* v. *United States*, 517 U.S. 416, 433 (1996) (holding that a district court "had no authority to grant" a motion for a judgment of acquittal that was filed outside the time limit prescribed by Federal Rule of Criminal Procedure 29(c)).

The Court has followed the same approach when a rule or doctrine originating in the Court's supervisory authority conflicts with the Federal Rules of Evidence, which were enacted by Congress in 1975, see Act of Jan. 2, 1975, Pub. L. No. 93-595, 88 Stat. 1926. In *Bourjaily* v. *United States*, 483 U.S. 171 (1987), this Court considered the "bootstrapping" rule associated with *Glasser* v. *United States*, 315 U.S. 60 (1942), and *United States* v. *Nixon*, 418 U.S. 683 (1974). The petitioner in *Bourjaily* argued that, because the bootstrapping rule had been "embedded in the previous approach," the Court "should not find that Congress altered the rule without affirmative evidence so indicating." *Bourjaily*, 483 U.S. at 178. The Court rejected that contention. The Court noted that "Rule 104, on its face, appear[ed] to allow the court to make [certain] preliminary factual determinations" without regard to any bootstrapping rule, and it stated that "[i]t would be extraordinary to require legislative history to *confirm* the plain meaning of" the relevant rule. *Ibid.*; accord *Daubert* v. *Merrell Dow Pharm., Inc.*, 509 U.S. 579, 587 (1993) (concluding that the rule of *Frye* v. *United States*, 293 F. 1013 (D.C. Cir. 1923), "was

superseded by the adoption of the Federal Rules of Evidence").[12]

2. The same analysis the Court applied in *Bank of Nova Scotia*, *Carlisle*, *Johnson*, *Bourjaily*, and *Daubert* governs here. "[T]he Federal Rules of Evidence are a legislative enactment." *Beech Aircraft Corp.* v. *Rainey*, 488 U.S. 153, 163 (1988). As a result, those Rules are as binding, and the Court interprets them, "as [it] would any statute." *Daubert*, 509 U.S. at 587.

Federal Rule of Evidence 402 establishes the general principle that "[a]ll relevant evidence is admissible." That same Rule also makes clear that any "except[ions]" must be "provided by" one of four sources: "the Constitution of the United States," an "Act of Congress," "these rules," or "other rules prescribed by the Supreme Court pursuant to statutory authority." Fed. R. Evid. 402. Exclusion of otherwise relevant evidence pursuant to the "judicially created federal rule of evidence" (*Carignan*, 342 U.S. at 41) that this Court created in *McNabb* and applied in *Mallory* would "effectively annul[]" the limits Congress has placed on the circumstances in which relevant evidence may be excluded (*Carlisle*, 517 U.S. at 426) and "confer on the judiciary discretionary power to disregard the considered limitations of the law it is charged with enforcing." *United*

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[12] In *Abel*, in contrast, the Court concluded that the common law rule permitting impeachment for bias was "entirely consistent with Rule 402's general requirement of admissibility" and it determined that it was "unlikely that the drafters [of the Federal Rules of Evidence] had intended to change the rule." *Daubert*, 509 U.S. at 588; accord *Abel*, 469 U.S. at 51 (explaining that "[a] successful showing of bias on the part of a witness would have a tendency to make the facts to which he testified less probable in the eyes of the jury than it would be without such testimony" and would thus constitute "relevant evidence" under Federal Rule of Evidence 401).

States v. *Payner*, 447 U.S. 727, 737 (1980). Because federal courts have "no authority to make" (*Johnson*, 520 U.S. at 466) such an exception to Federal Rule of Evidence 402, that Rule eliminates *McNabb-Mallory* as an evidentiary doctrine, even if it is assumed that Section 3501(c) implicitly left that doctrine standing for confessions taken outside of the six-hour period of delay.

C. Section 3501's Legislative History Does Not Warrant A Different Result

1. As the previous sections explained, an examination of the full text of 18 U.S.C. 3501 and Federal Rule of Evidence 402 makes clear that both provisions independently mandated the admission into evidence of petitioner's voluntary confessions, made after a valid waiver of his *Miranda* rights. Legislative history, therefore, need not be considered in order to resolve this case. See, *e.g.*, *Arlington Cent. Sch. Dist. Bd. of Educ.* v. *Murphy*, 548 U.S. 291 (2006) ("When the statutory language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.") (internal quotation marks and citation omitted); *Whitfield* v. *United States*, 543 U.S. 209, 215 (2005) (no need to consider legislative history where "the meaning of [the statutory] text is plain and unambiguous"); *Lamie*, 540 U.S. at 536 ("We should prefer the plain meaning since that approach respects the words of Congress" and "avoid[s] the pitfalls that plague too quick a turn to the more controversial realm of legislative history."); *Ratzlaf* v. *United States*, 510 U.S. 135, 147-148 (1994) ("[W]e do not resort to legislative history to cloud a statutory text that is clear.").

2. In any event, Section 3501's legislative history further refutes petitioner's contention that the statute

by its own force mandates the suppression of any voluntary confessions.

Section 3501 was enacted as part of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 701, 82 Stat. 210. The initial version of the legislation that passed the House (H.R. 5037, 90th Cong., 1st Sess. (1967)) contained no provision governing the admissibility of confessions, and the initial House debate did not address the subject. See 113 Cong. Rec. 21,812-21,861 (1967).

Section 3501 was added to the bill by the Senate Judiciary Committee, which also added provisions about the admissibility of eyewitness testimony. See S. Rep. No. 1097, 90th Cong., 2d Sess. 10 (1968) (*Senate Report*). As in the final legislation, the version of Section 3501(a) that was reported out of committee provided that "a confession * * * shall be admissible in evidence if it is voluntarily given," with the remainder of Section 3501(a) and 3501(b) providing procedures for trial courts to follow in making that determination. *Senate Report* 9. Section 3501(c) proscribed delay in presentment as a basis for suppression. Unlike the final legislation, however, the original version of Section 3501(c) did not contain any reference to how long after a defendant's arrest a confession was obtained. Instead, it provided that a confession "shall not be inadmissible solely because of delay" in presentment "if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury." *Ibid.*

The form in which Section 3501 emerged from the Senate Judiciary Committee is telling for two reasons. First, it is clear that the original purpose of the bill was to eliminate the *McNabb-Mallory* rule entirely rather

than to codify any portion of that rule. Second, to the extent the Court finds any tension or redundancy between Congress's statement in Section 3501(c) that a confession "shall not be inadmissible solely because of delay" and its direction in Section 3501(a) that all voluntary confessions "shall be admissible," those issues characterized the statute long before the addition of the six-hour safe-harbor period upon which petitioner relies.

The *Senate Report* confirms that Section 701 of the proposed legislation, which included all of what became Section 3501, was designed "to offset the harmful effects of the *Mallory* case." *Senate Report* 38; see *id.* at 41-51 (discussing *Escobedo* v. *Illinois*, 378 U.S. 478 (1964), and *Miranda*, *supra*). The *Senate Report* explained that there was "no constitutional bar to congressional abrogation of the *Mallory* rule," noting that because that rule "[was] not based on any constitutional principle, it c[ould] be changed by legislation." *Id.* at 40 (citation omitted). The *Senate Report* further explained that "[e]nactment of the provisions of subsections 3501 and 3502 would assign proper weight to the *Mallory* rule," and create a regime under which "[d]elay in bringing a suspect before a committing magistrate would be a factor to consider in determining the issue of voluntariness, but it would not be the sole criterion to be considered—operating to automatically exclude an otherwise competent confession." *Id.* at 40-41.

The record of the initial Senate debate on Section 3501 confirms that its supporters and opponents understood that the statute would do away with the judge-made rule embodied in the *McNabb-Mallory* line of cases. Senator Thurmond, who supported the legislation, stated that the bill "would restore the test for admissibility of confessions in criminal cases to that time-tested

and well-founded standard of voluntariness" and would "set aside the inflexible and technical rules established in" *Mallory*, *Escobedo*, and *Miranda*. 114 Cong. Rec. 11,612 (1968); accord *id.* at 11,201-11,202 (remarks of Sen. McClellan). Senator Stennis stated that Section 3501(c) would "counteract the so-called Mallory rule, and put an end to the practice of discarding voluntary confessions of guilt because the police officers were not hasty enough in getting the defendant before a committing magistrate." *Id.* at 14,016. Senator Stennis further explained that, under the proposed legislation, "[d]elay in taking the defendant before a commissioner would continue to be a factor in determining whether his confession was voluntarily given but it would no longer be the overriding issue." *Ibid.* Senators who opposed the legislation stated that it would effect "[t]he outright repeal of Mallory,"[13] "revers[e]" *Mallory*,[14] and "overrule" that decision.[15]

3. Petitioner acknowledges that, "[a]s originally proposed" by the Senate Judiciary Committee, Section 3501 "sought to abrogate the *McNabb-Mallory* rule entirely." Pet. Br. 39. Petitioner asserts (*ibid.*), however, that a floor amendment proposed by Senator Scott and adopted by the Senate before the bill was returned to the House of Representatives was part of a "compromise" whose purpose was to "partially codify and partially abrogate" the *McNabb-Mallory* rule.

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[13] 114 Cong. Rec. at 14,136 (remarks of Sen. Fong); accord *id.* at 14,158 (remarks of Sen. Hart).

[14] 114 Cong. Rec. at 12,924 (remarks of Sen. Young).

[15] 114 Cong. Reg. at 11,594 (remarks of Sen. Morse); *id.* at 11,891 (remarks of Sen. Tydings), *id.* at 14,167 (remarks of Sen. McIntyre); *id.* at 11,234 (remarks of Sen. Tydings); *id.* at 11,745 (remarks of Sen. Brooke); *id.* at 12,292 (remarks of Sen. Fong).

Even if petitioner's interpretation of the legislative events was unambiguously correct (and it is not), it would still not justify departing from the clear language that Congress actually enacted. "Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp.* v. *Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Petitioner does not identify any "ambiguous terms" upon which his assertions of legislative horse-trading (Pet. Br. 46-50) or conscious vote-structuring (*id.* at 52-55) could potentially shed light.

At any rate, petitioner's interpretation of the Scott amendment is also incorrect. To begin, petitioner's view is inconsistent with Senator Scott's description of his own proposal as a "very simple amendment" to which he had "heard of no objection." 114 Cong. Rec. at 14,184. These descriptions indicate that Senator Scott did not perceive the change he was proposing as one that would alter the essential character of the bill. To the contrary, Senator Scott explained that his proposal was intended to forestall a constitutional attack on Section 3501(c), because, in his view, the statute would be of "doubtful validity" if it were applied to forbid suppression of a confession obtained after "a 36- or a 24-hour interrogation." *Id.* at 14,186. In contrast, petitioner views the Scott amendment as having codified in part one of the very decisions (*Mallory*) that voluminous and far clearer indicators of legislative meaning demonstrate that Congress intended to overturn by enacting Section 3501.[16]

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[16] Petitioner is correct that Senator Scott also stated that his amendment "provide[d] that the period during which confessions may be received or interrogations may continue, which may or may not result in a confession, shall in no case exceed 6 hours." 114 Cong. Rec. at

Petitioner's arguments (Pet. Br. 45-50) based on the D.C. Crime Act are similarly flawed. Even if petitioner is correct that at least some Senators understood the Scott amendment to mirror the approach taken in that earlier legislation, that fact would still not clearly indicate that Section 3501(c) mandates the suppression of any voluntary confession. In Section 301(b) of the D.C. Crime Act, Congress provided that "[a]ny statement, admission, or confession made by an arrested person within three hours immediately following his arrest shall not be excluded from evidence * * * solely because of delay in presentment." Act of Dec. 27, 1967, Pub. L. No. 90-226, § 301(b), 81 Stat. 735-736. Like Section 3501(c), however, this language states only that certain confessions (those obtained within three hours of arrest) shall not be excluded on certain grounds (delay alone); it does not state that all—or any—other confessions may or must be excluded based on delay alone. In order to make his "compromise" argument work, therefore, petitioner must argue that the legislative history of a different piece of legislation (the D.C. Crime Act) indicates that that legislation means something that its own text does not say and then further argue that the legislative history of the Scott amendment indicates that Section 3501 should be construed in a similar, and similarly atextual, fashion. That highly attenuated use of legislative history is unfounded.

14,184. But that comment has no basis in the statutory text. Section 3501 establishes rules about the admissibility of certain confessions in court; nothing in the statute forbids police officers from questioning a suspect who has been detained for more than six hours but has not yet been presented to a magistrate, and nothing in the statute explicitly excludes any confession.

Petitioner's argument about the way in which the Scott amendment was modified before its ultimate incorporation into the legislation on the Senate floor (Pet. Br. 55-56) undermines, rather than supports, his position. As petitioner observes, Senator Scott's original proposal would have stricken the voluntariness and jury-consideration requirements from Section 3501(c) and replaced them with language focused exclusively on the amount of time between arrest and confession. See 114 Cong. Rec. at 14,184. Senator McClellan suggested retaining the voluntariness and jury-consideration requirements in Section 3501(c) as well, Senator Scott agreed to that proposal, and the amendment was modified in the manner proposed by Senator McClellan. *Id.* at 14,184-14,185.

Petitioner asserts (Pet. Br. 56) that this sequence of events demonstrates that "subsections (a) and (b) were intended to operate independently of subsection (c), and that the *McNabb-Mallory* rule is addressed by subsection (c) alone." But there is a more straightforward explanation for Senator McClellan's proposal—one far more consistent with what Senator McClellan actually said in making it. Neither Section 3501(a) nor Section 3501(c) expressly directs the exclusion of any confession. See p. 24, *supra*. As a result, a failure to reiterate the voluntariness and jury-consideration requirements in Section 3501(c) would have resulted in a statute that could most naturally have been read to authorize the admission of any confession—whether voluntary or not—so long as it was obtained within six hours of arrest. And that is the precise concern that Senator McClellan expressed in justifying his proposal to revise the language of the Scott amendment. See 114 Cong. Rec. at 14,184 (stating that "[i]f the judge finds [a confession]

was not voluntary, no matter if [the defendant] was in custody for only 30 minutes, the confession should not be admitted").

Petitioner's contention that the Scott amendment codified *Mallory* with respect to confessions obtained more than six hours after a defendant's arrest on federal charges is further undermined by what transpired in the House of Representatives after the revised legislation passed the Senate. During the final floor debate, the sponsor of the earlier House version of the bill stated that the final, post-Scott amendment, version of Section 3501 "turn[ed] the clock backward to the day before *Mallory* * * * and ma[de] 'voluntariness' the sole test as to the validity of a confession." 114 Cong. Rec. at 16,066 (remarks of Rep. Celler). Other representatives agreed with that description of the effect of Section 3501, and they specifically adverted to the demise of the *Mallory* rule. See *id.* at 16,273 (remarks of Rep. Rogers) ("Adoption of this change * * * would assign proper weight to the [*Mallory*] rule. Delay in bringing a suspect before a committing magistrate would be a factor to consider in determining the issue of voluntariness, but it would not be the sole criterion to be considered."); *id.* at 16,275 (remarks of Rep. McGregor) ("Section 3501(c) overrules the Mallory decision"); *id.* at 16,276 (remarks of Rep. Anderson) ("Section 3501(c) does overrule the Mallory decision."); *id.* at 16,295 (remarks of Rep. Reid) (stating that bill "would reverse" *Mallory*); see also *id.* at 16,285 (remarks of Rep. Machen) (stating that the title of the legislation that included Section 3501 would "mak[e] a confession admissible as

evidence if the trial judge finds it was given voluntarily").[17]

D. The Canon Of Constitutional Avoidance Does Not Apply

Petitioner briefly argues (Pet. Br. 35-36) that the interpretation of Section 3501 adopted by the court of appeals "should be rejected as constitutionally doubtful." Pet. Br. 35. That contention is without merit.

1. The canon of constitutional avoidance "is * * * a means of giving effect to congressional intent, not of subverting it," and it is properly invoked only where a court must "choos[e] between competing plausible interpretations of a statutory text." *Clark* v. *Martinez*, 543 U.S. 371, 380-382 (2005). Here, for the reasons explained above, the statutory text cannot be plausibly interpreted to mandate exclusion of voluntary confessions based solely on more than six hours of delay in presentment.

2. In any event, petitioner has also failed to identify any "serious constitutional doubts," *Clark*, 543 U.S. at 381, that would be raised by construing Section 3501 in accordance with its text. Petitioner is correct (Pet. Br. 36) that "Congress * * * can neither direct the courts

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[17] A bill analysis prepared by the Library of Congress' Legislative Reference Service and placed in the *Congressional Record* by Representative Cellar describes Section 3501(c) as providing a six-hour "time limit * * * during which interrogation may take place." 114 Cong. Rec. at 16,068. That same bill analysis, however, also states that Section 3501(c) "is obviously intended to repeal the decision of the Supreme Court in *Mallory* v. *United States*, 354 U.S. 449 (1957))." *Ibid.* At any rate, the first statement quoted above at most evidences an understanding—which is consistent with the creation of the safe-harbor period—that delays for interrogation should not last more than six hours. It does not speak at all, however, to what, if any, consequences a longer delay would have with respect to the admissibility of any confession obtained during the post-six-hour period.

to admit confessions the courts find to be involuntary, nor accomplish the same thing by narrowing the factual grounds for determining involuntariness." But to the extent that petitioner suggests that the statute, read as the court below interpreted it, would preclude a finding of involuntariness based *solely* on delay in presentment of less than six hours, no serious constitutional questions are raised. This Court has explained that the overriding inquiry with respect to the constitutional voluntariness analysis is "'whether a defendant's will was overborne' by the circumstances surrounding the giving of a confession." *Dickerson*, 530 U.S. at 434 (quoting *Schneckloth* v. *Bustamonte,* 412 U.S. 218, 226 (1973)). That analysis, in turn, requires "consideration [of] 'the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.'" *Ibid.* (quoting *Schneckloth*, 412 U.S. at 226).

Petitioner does not assert that a confession made less than six hours after a defendant's arrest could ever be deemed involuntary in a constitutional sense based "solely" on the fact of the delay in presentment. Thus, to the extent that 18 U.S.C. 3501(c) would preclude such a determination, it conforms to constitutional norms and raises no serious constitutional issues. Section 3501(b), in turn, provides that courts should in all cases consider the existence and extent of any delay in presentment as a factor in assessing the voluntariness of a confession. Thus, even a delay of less than six hours, in combination with other circumstances could render a confession involuntary. Because petitioner has not and cannot identify any situation in which this regime would raise any serious constitutional concerns, the canon of constitutional avoidance cannot justify creating an exclusionary

rule that is nowhere stated in the statute's text and that would be inconsistent with Section 3501(a).

E. Petitioner's Policy Arguments Do Not Warrant A Different Result

Petitioner contends (Pet. Br. 57) that "interpreting § 3501(c) so as to retain a modified *McNabb-Mallory* rule w[ould] be beneficial for law enforcement and the courts." Petitioner's policy argument provides no basis for overriding the statute's text and reversing the court of appeals' judgment in this case. In any event, petitioner has the policy interests backwards.

1. As in any case involving statutory interpretation, this Court's duty is "to construe what Congress has written," *Board of Educ.* v. *Rowley*, 458 U.S. 176, 191 n.11 (1982), rather than to devise its own scheme for dealing with matters that Congress has already addressed. And for the reasons stated above, Section 3501 and Federal Rule of Evidence 402 both mandated the admission of petitioner's voluntary confessions in this case and no statute or other provision of law required their exclusion.

2. At any rate, petitioner's policy arguments are entirely unfounded. This Court has acknowledged "society's compelling interest in finding, convicting, and punishing those who violate the law," *Moran* v. *Burbine*, 475 U.S. 412, 426 (1986), and it has emphasized that "the ready ability to obtain uncoerced confessions is not an evil but an unmitigated good," *McNeil* v. *Wisconsin*, 501 U.S. 171, 181 (1991). The Court has recently emphasized the "substantial social costs" of exclusionary rules. *Hudson*, 547 U.S. at 591; see *ibid.* (the Court has "repeatedly emphasized that the [exclusionary] rule's 'costly toll' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its]

application" (brackets in original) (citation omitted)). As a result, "society would be the loser" if this Court required the suppression of petitioner's voluntary confessions as a remedy for any delay in presenting petitioner to a magistrate. *McNeil*, 501 U.S. at 181.

Against those high costs to the truth-seeking function, petitioner has failed to demonstrate that that adoption of his proposed rule would produce more than "insignificant advantages." *McNeil*, 501 U.S. at 180. Federal Rule of Criminal Procedure 5(a)(1)(A) already provides that a law enforcement officer who makes an arrest on federal charges "*must* take the defendant without unnecessary delay before a magistrate judge" or other appropriate judicial officer. (emphasis added). There is no "demonstrated pattern of * * * violations" of that command. *Hudson*, 547 U.S. at 604 (Kennedy, J., concurring in part and concurring in the judgment). To the contrary, the government is aware of only a handful of post-*Alvarez-Sanchez* decisions in which courts that apply the rule petitioner advocates have suppressed voluntary confessions based on an unreasonable delay in presentment, see Br. in Opp. 16-17, and petitioner has not cited any others. If greater concerns were to arise in the future, Congress or the relevant rules committee would be well-equipped to investigate the extent and causes of any problems and to determine whether suppression of voluntary confessions would be an appropriate response. Cf. *Hudson*, 547 U.S. at 603 (Kennedy, J., concurring in part and concurring in the judgment).[18]

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[18] Petitioner does not assert that Rule 5(a)(1)(A) itself required suppression of his voluntary confessions, and it does not in any event. That Rule does not "prescribe specific remedies for violations of" its command, *Sanchez-Llamas*, 548 U.S. at 343, and "[t]here is no presumption or general rule that for every duty imposed" upon law enforcement

But there is certainly no basis to "*assume* that exclusion in this context is necessary deterrence." *Hudson*, 547 U.S. at 597 (emphasis added).

Not only has petitioner failed to assert, much less demonstrate, any pattern of violations of Federal Rule of Criminal Procedure 5(a)(1)(A), he has also failed to demonstrate that his proposed approach would significantly increase officers' existing incentives to comply with that Rule. The courts of appeals that have correctly held that Section 3501 does not permit suppression of a voluntary confession made outside the six-hour safe-harbor period have nonetheless recognized that a

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"there must exist some corollary punitive sanction for departures or omissions," *United States* v. *Montalvo-Murillo*, 495 U.S. 711, 717 (1990). The issue, instead, is whether anything in Criminal Rule 5 "otherwise provide[s]" (Fed. R. Evid. 402) that a court should suppress highly relevant evidence in order to punish the government for unwarranted presentment delay. And as this Court has recognized, the answer is "no." See *McNabb*, 318 U.S. at 345 (acknowledging that an earlier statute—of which Rule 5(a)(1)(A) "is a compendious restatement, without substantive change," *Mallory*, 354 U.S. at 452—did not by its own force "forbid[] the use of evidence" acquired after a period of unreasonable presentment delay).

The Advisory Committee's Note on the proposed 1972 version of Federal Rule of Evidence 402 cited this Court's decision in *Mallory* for the proposition that "effective enforcement of the command, originally statutory and now found in Rule 5(a) of the Rules of Criminal Procedure * * * is held to require the exclusion of statements elicited during detention in violation thereof." Although "the Advisory Committee Notes provide a reliable source of insight into the meaning of a rule," *United States* v. *Vonn*, 535 U.S. 55, 64 n.6 (2002), the statement quoted above does not purport to be an interpretation of Federal Rule of Evidence 402 itself, nor does it purport to interpret Federal Rule of Criminal Procedure 5. It simply restates the conclusion of this Court in *Mallory*. And neither the text nor the Advisory Committee's Notes to Criminal Rule 5(a)(1) indicates that the Rule mandates the exclusion of confessions obtained as a consequence of its violation.

delay in presentment is a factor that should be considered in assessing voluntariness. See J.A. 189-192; *United States* v. *Glover*, 104 F.3d 1570, 1583 (10th Cir. 1997); *United States* v. *Christopher*, 956 F.2d 536, 538 (6th Cir. 1991), cert. denied, 505 U.S. 1027 (1992). As a result, the rule advocated by petitioner will affect the outcome only in that category of cases where: (i) the defendant is arrested on federal charges but is not taken before a magistrate within six hours of arrest; (ii) the delay in presentment beyond six hours is not reasonable; (iii) the defendant confesses during the period beyond six hours in which presentment was unreasonably delayed; (iv) the confession is not inadmissible under *Miranda* or the Fourth Amendment exclusionary rule; and (v) neither the delay alone nor the delay in conjunction with any other relevant factor renders the confession involuntary under the standards set forth in Section 3501(b). It would appear that not many such cases exist.[19]

3. Even if petitioner's proposed rule would deter a meaningful number of violations of Federal Rule of Criminal Procedure 5(a), suppression of voluntary confessions would still be an unwarranted response. The Court has "applied the exclusionary rule primarily to deter constitutional violations." *Sanchez-Llamas*, 548 U.S. at 348. Here, in contrast, any possible violation was purely non-constitutional in nature and Congress

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[19] Petitioner also suggests (Pet. Br. 57) that law enforcement officers require an incentive to comply with what he describes as "§ 3501(c)'s six-hour limitation." As explained previously, however, see note 16, *supra*, the "time limitation" mentioned in Section 3501(c) is not a limitation on the period during which a pre-presentment interrogation may last. Instead, it is a limitation on the period in which a delay in presentment may not serve as the sole basis for excluding a confession.

has not provided that suppression is an appropriate remedy. Cf. *United States* v. *Montalvo-Murillo*, 495 U.S. 711, 721 (1990) ("We do not agree that we should, or can, invent a remedy to satisfy some perceived need to coerce the courts and the Government into complying with the statutory time limits.").

In *Sanchez-Llamas*, the Court described its decision in *McNabb* as having been based in part on the fact that "the excluded evidence arose directly out of statutory violations that implicated important * * * Fifth Amendment interests." 548 U.S. at 348. Regardless of whether the balance that the Court struck in *McNabb* was appropriate as an initial matter, but see note 5, *supra*, other legal rules that have developed since then provide significant protection against the abuses at which *McNabb* and *Mallory* were originally aimed. Cf. *Texas* v. *Cobb*, 532 U.S. 162, 171 n.2 (2001) (emphasizing the need to avoid "giv[ing] short shrift to the Fifth Amendment's role (as expressed in *Miranda* and *Dickerson*) in protecting a defendant's right to consult with counsel before talking to police"). In light of those post-*McNabb* and post-*Mallory* developments, the balance of interests now tips decisively against suppression.

The defendants in *McNabb* and *Mallory* were never told that they were entitled to the assistance of counsel, see *McNabb*, 318 U.S. at 335; *Mallory*, 354 U.S. at 455, and the defendant in *Mallory* was not "warned that he might keep silent and 'that any statement made by him may be used against him,'" *ibid.* In contrast, the officers in this case "scrupulously followed *Miranda*'s dictates when questioning [petitioner]." *Cobb*, 532 U.S. at 171; see J.A. 84-85, 126-128, 172-174, 177-179. Petitioner was advised "in clear and unequivocal terms that he ha[d] the right to remain silent" and that "anything said c[ould]

and w[ould] be used against [him] in court." *Miranda*, 384 U.S. at 467-469. He was also "clearly informed that he ha[d] the right to consult with a lawyer and to have the lawyer with him during [the] interrogation," *id.* at 471, and that "if he [was] indigent a lawyer [would] be appointed to represent him," *id.* at 473. Had petitioner invoked either his right to remain silent or his right to counsel at any point while speaking with the agents, this Court's decisions would have required that all questioning cease. See *id.* at 473-474; see also *Minnick* v. *Mississippi*, 498 U.S. 146, 151 (1990); *Arizona* v. *Roberson*, 486 U.S. 675, 680 (1988). In short, if petitioner "d[id] not wish to communicate with the police except through an attorney, he c[ould] simply [have told] them that when they [gave] him the *Miranda* warnings." *McNeil*, 501 U.S. at 180.

A number of courts of appeals have concluded that a defendant who was advised of and waived his *Miranda* rights is barred from raising a claim under the *McNabb-Mallory* doctrine on the theory that the *Miranda* warnings supply the words of caution that the Court found lacking in those cases.[20] Although the government agrees with that analysis, the relevant point here is more general: in light of the protections afforded by *Miranda* and other post-*McNabb* and post-*Mallory* decisions, it is unnecessary and inappropriate to have a separate, nonconstitutional, exclusionary rule whose only independent

[20] See, *e.g.*, *United States* v. *Salamanca*, 990 F.2d 629, 633-634 (D.C. Cir.), cert. denied, 510 U.S. 928 (1993); *United States* v. *Barlow*, 693 F.2d 954, 959 (6th Cir. 1982), cert. denied, 461 U.S. 945 (1983); *United States* v. *Indian Boy X*, 565 F.2d 585, 591 (9th Cir. 1977), cert. denied, 439 U.S. 841 (1978); *Pettyjohn* v. *United States*, 419 F.2d 651, 655-656 (D.C. Cir. 1969), cert. denied, 397 U.S. 1058 (1970); *O'Neal* v. *United States*, 411 F.2d 131, 136-137 (5th Cir.), cert. denied, 396 U.S. 827 (1969).

role is to require exclusion of voluntary confessions in situations where all of the other rules have been satisfied.[21]

4. Petitioner also suggests (Pet. Br. 57) that "a bright-line rule" would be "much easier for law enforcement * * * to implement." But "the police do not need [this Court's] assistance to establish such a guideline; they are free, if they wish, to adopt [one] on their own." *McNeil*, 501 U.S. at 181-182.

In addition, it is unclear how the regime proposed by petitioner is any more of a "bright-line rule" (Pet. Br. 57) than the one established by the texts of Section 3501 and Federal Rule of Evidence 402. Under both approaches,

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[21] This case differs from *McNabb* and *Mallory* in another respect as well. In those cases, the questioning involved the crime for which the defendants had already been arrested. See *McNabb*, 318 U.S. at 333-338 (murder of a federal agent); *Mallory*, 354 U.S. 450-451 (rape). Here, the crime for which petitioner had been arrested was assaulting a federal officer on the morning of his arrest. But petitioner confessed to an entirely unrelated armed bank robbery that had occurred more than three months before the date of his arrest. J.A. 62, 75-76, 83, 94, 98-99 n.2, 116-177. Whatever the case when the police, as in *McNabb* and *Mallory,* question the defendant about the crime of arrest during an unreaasonable delay in presentment on that crime, a voluntary confession should not be suppressed as a result of an unreasonable delay in presentment when the confession involves a different crime from the one for which the defendant has been arrested. Cf. *McNeil*, 501 U.S. at 175 (holding that both the Sixth Amendment right to counsel and the prophylactic rule adopted in *Michigan* v. *Jackson*, 475 U.S. 625 (1986), are "offense specific"). This Court's decision in *McNeil* underscores why suppression of petitioner's voluntary confessions would be a particularly unwarranted windfall in this case. Even if petitioner had been immediately presented to a magistrate—and even if he had promptly invoked his right to counsel with respect to the charge of assaulting a federal officer—law enforcement officers would still have been entitled to approach him, seek a waiver of his rights, and question him about the armed bank robbery for which he was ultimately convicted.

a delay of less than six hours in presentment will be insufficient, standing alone, to justify exclusion, but courts will be able to consider the amount of any delay in assessing whether the confession was voluntary. It would certainly be a bright-line rule to say that all confessions obtained more than six hours after a defendant's arrest must be excluded, but Section 3501(c)'s "[p]rovided" clause plainly forecloses that option. The line would still be fairly bright if any exception were strictly limited to situations where the delay in presentment was caused by difficulties associated with transporting the defendant, but petitioner does not advocate for such an untenable regime. Whatever else a test that asks whether a delay in presentment was "unreasonable or unnecessary" (Pet. Br. 28) in light of all of the relevant circumstances of a particular case may be, it is not a bright-line rule.

F. If This Court Concludes That Section 3501 Mandates Or Authorizes The Exclusion Of Certain Voluntary Confessions, It Should Remand For Further Proceedings

If this Court were to conclude that Section 3501 permits or mandates the suppression of certain voluntary confessions as a result of an unreasonable delay in presentment, the proper course would be to remand to the court of appeals for further proceedings. The government argued below "that there were reasonable grounds for each of the steps which caused delay in [petitioner's] presentment to the magistrate," Gov't C.A. Br. 14-15; see *id.* at 14-26, but the court of appeals majority did not address the issue because it concluded that Section 3501 "narrows the meaning of 'unnecessary delay' [in Federal Rule of Criminal Procedure 5(a)(1)(A)] by restricting it to delays that are part of making a defendant's statements 'involuntary,'" J.A. 190-191. Petitioner also errs (Pet. Br. 60) in contending that the court of appeals ma-

jority "agreed that [petitioner's] oral and written confessions were taken outside the six-hour time period of § 3501(c)." To the contrary, the majority stated that its interpretation of Section 3501 made it "unnecessary for [it] to address the District Court's holding that [petitioner's] oral confession should be treated as having been made within six hours of arrest." J.A. 197 n.7.

This Court generally declines to reach issues that "were not addressed by the Court of Appeals." *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Petitioner identifies no basis for making an exception here.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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DECEMBER 2008

APPENDIX

1. 18 U.S.C. 3501 provides:

Admissibility of confessions

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided*, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.

(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(e) As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

2. Federal Rule of Criminal Procedure 5 provides:

Initial Appearance

(a) In General.

(1) Appearance Upon an Arrest.

(A) A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise.

(B) A person making an arrest outside the United States must take the defendant without unnecessary delay before a magistrate judge, unless a statute provides otherwise.

(2) Exceptions.

(A) An officer making an arrest under a warrant issued upon a complaint charging solely a violation of 18 U.S.C. § 1073 need not comply with this rule if:

(i) the person arrested is transferred without unnecessary delay to the custody of appropriate state or local authorities in the district of arrest; and

(ii) an attorney for the government moves promptly, in the district where the warrant was issued, to dismiss the complaint.

(B) If a defendant is arrested for violating probation or supervised release, Rule 32.1 applies.

(C) If a defendant is arrested for failing to appear in another district, Rule 40 applies.

(3) Appearance Upon a Summons. When a defendant appears in response to a summons under Rule 4, a magistrate judge must proceed under Rule 5(d) or (e), as applicable.

(b) Arrest Without a Warrant. If a defendant is arrested without a warrant, a complaint meeting Rule 4(a)'s requirement of probable cause must be promptly filed in the district where the offense was allegedly committed.

(c) Place of Initial Appearance; Transfer to Another District.

(1) Arrest in the District Where the Offense Was Allegedly Committed. If the defendant is arrested in the district where the offense was allegedly committed:

(A) the initial appearance must be in that district; and

(B) if a magistrate judge is not reasonably available, the initial appearance may be before a state or local judicial officer.

(2) Arrest in a District Other Than Where the Offense Was Allegedly Committed. If the defendant was arrested in a district other than where the offense was allegedly committed, the initial appearance must be:

(A) in the district of arrest; or

(B) in an adjacent district if:

(i) the appearance can occur more promptly there; or

(ii) the offense was allegedly committed there and the initial appearance will occur on the day of arrest.

(3) Procedures in a District Other Than Where the Offense Was Allegedly Committed. If the initial appearance occurs in a district other than where the offense was allegedly committed, the following procedures apply:

(A) the magistrate judge must inform the defendant about the provisions of Rule 20;

(B) if the defendant was arrested without a warrant, the district court where the offense was allegedly committed must first issue a warrant before the magistrate judge transfers the defendant to that district;

(C) the magistrate judge must conduct a preliminary hearing if required by Rule 5.1;

(D) the magistrate judge must transfer the defendant to the district where the offense was allegedly committed if:

(i) the government produces the warrant, a certified copy of the warrant, or a reliable electronic form of either; and

(ii) the judge finds that the defendant is the same person named in the indictment, information, or warrant; and

(E) when a defendant is transferred and discharged, the clerk must promptly transmit the papers and any bail to the clerk in the district where the offense was allegedly committed.

(d) Procedure in a Felony Case.

(1) Advice. If the defendant is charged with a felony, the judge must inform the defendant of the following:

(A) the complaint against the defendant, and any affidavit filed with it;

(B) the defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

(C) the circumstances, if any, under which the defendant may secure pretrial release;

(D) any right to a preliminary hearing; and

(E) the defendant's right not to make a statement, and that any statement made may be used against the defendant.

(2) Consulting with Counsel. The judge must allow the defendant reasonable opportunity to consult with counsel.

(3) Detention or Release. The judge must detain or release the defendant as provided by statute or these rules.

(4) Plea. A defendant may be asked to plead only under Rule 10.

(e) Procedure in a Misdemeanor Case. If the defendant is charged with a misdemeanor only, the judge must inform the defendant in accordance with Rule 58(b)(2).

(f) Video Teleconferencing. Video teleconferencing may be used to conduct an appearance under this rule if the defendant consents.